

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

BERTHON-JONES et al.

Atty. Ref.: JPD-4398-427

Serial No. 10/533,928

TC/A.U.: 3771

Filed: July 29, 2005

Examiner: Clinton Ostrup

For: MASK AND COMPONENTS THEREOF

* * * * *

December 16, 2009

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.181 - REPLY TO NOTIFICATION OF
NON-COMPLIANT APPEAL BRIEF**

In reply to the Notification of Non-Compliant Appeal Brief mailed November 17, 2009, entry of the Appeal Brief filed June 29, 2009, and the replacement sections of the Appeal Brief filed August 12, 2009, are respectfully requested.

Statement of Facts

1. A Notice of Appeal and a Pre-Appeal Brief Request for Review were filed March 24, 2009.
2. A Notice of Panel Decision mailed April 28, 2009 indicated the application remained under appeal and was to proceed to the Board.
3. An Appeal Brief was filed June 29, 2009.
4. A Notification of Non-Compliant Appeal Brief was mailed August 7, 2009.
5. The August 7, 2009 Notification was issued by Darlene Brown, Patent Appeals Specialist.

6. Replacement sections of the Appeal Brief were filed August 12, 2009.
7. The Appeal Brief was docketed to the examiner on September 8, 2009.
8. On November 17, 2009, the examiner issued a Notification of Non-Compliant Appeal Brief.
9. The November 17, 2009 Notification states:

The Appeal Brief filed 6/29/09 and replacement sections (VI GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL and (VII) ARGUMENT filed 8/12/09 does not comply with 41.37(c)(1)(vii) because it refers to Appellants arguments as Applicants arguments throughout the Appeal Brief. For example, see page 17, line 3; page 19, line 6 & line 17; page 20, line 14; page 21, line 11; page 24, line 20; page 26, line 5; and page 27, line 22.

Points to be Reviewed and Action Requested

10. 37 C.F.R. § 41.37(c)(1)(vii) states:

The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which

merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

11. There is nothing in the provisions of 37 C.F.R. § 41.37(c)(1)(vii) that requires Applicants to refer to themselves as Appellants, nor anything that prohibits Appellants from referring to themselves as Applicants, in the Argument section of the Appeal Brief.

12. There is, and can be, no doubt as to whom the terms "Applicants" and "Appellants" as used in the Appeal Brief refer to.

13. Withdrawal of the Notification dated November 17, 2009 and entry of the Appeal Brief filed June 29, 2009 and August 12, 2009 are respectfully requested.

It is believed that no fees are necessary, however, the Commissioner is authorized to charge the undersigned's deposit account #14-1140 in whatever amount is necessary for entry of this paper and the continued pendency of the captioned application.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____ /John P. Darling/
John P. Darling
Reg. No. 44,482

JPD:bhs:tlm
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100